Legislative Research Council

FIFTY-FIFTH INTERIM REPORT

November 2011

500 East Capitol, Pierre, South Dakota 57501-5070
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AGRICULTURAL LAND ASSESSMENT IMPLEMENTATION AND OVERSIGHT ADVISORY TASK FORCE

The Agricultural Land Assessment Implementation and Oversight Advisory Task Force consists of four members of the House of Representatives, four members of the Senate, and six members of the general public (at least two of the general public members shall have an agricultural background and at least two of the general public members shall have a business background).

Study Assignment

The task force shall review the implementation of the provisions of law concerning the assessment and taxation of agricultural land and advise the Department of Revenue regarding the rules promulgated by the Department to administer the provisions concerning the assessment and taxation of agricultural lands. In addition, the task force shall make recommendations in the following areas:

1. The proper percentage of annual earning capacity to be used to determine the agricultural income value for cropland and noncropland; and
2. The proper capitalization rate that minimizes the shift in total taxable value between agricultural land and the other property classifications.

Summary of Interim

The interim Agricultural Land Assessment Implementation and Oversight Advisory Task Force held its first meeting on April 29. Colleen Skinner, Division of Property and Special Taxes with the Department of Revenue, explained the productivity valuation methodology for assessing agricultural land. The productivity value formula multiplies the gross revenue by the landlord share percentages and then divides this amount by the capitalization rate. The gross revenue for cropland is determined by using an 8-year Olympic average of yields and commodity prices. The gross revenue for noncropland is determined by using an 8-year Olympic average of cash rents.

The landlord share percentages and the capitalization rate are set in statute – SDCL 10-6-33.28. The landlord percentages are 35% for cropland and 100% for noncropland. The capitalization rate is 6.6%. South Dakota State University (SDSU) uses National Agricultural Statistic Service (NASS) data to establish the gross revenue per acre in each county based on an 8-year Olympic average.

Once the productivity formula produces the average crop and noncrop values per acre, the valuation process is the similar to the old market system. Each soil in the county is rated on a scale from 1.0 to 0.1. The average cropland value per acre is projected up to establish a value for the top rate crop soil. The average noncropland value per acre is projected up to establish a value for the top rated noncrop soil. The variation between cropland and noncropland is based on the capability rating. Classes 1 – 3 are soils capable of growing crops, classes 5 – 8 are considered grassland, and class 4 could be considered either way. The soil survey provides an inventory of the acres of each type of soil in each parcel. The number of acres of each type of soil in each parcel is multiplied by the dollar value for that type of soil. The dollar values are then added together to determine the total value of the parcel.

Secretary Gerlach said that the Department of Revenue has a good model to utilize for agricultural land assessment. The directors of equalization are important to the delivery of this process. Issues will be evaluated on a county to county basis to ensure the process is as fair as possible. Some task force members believe there is a disconnect between the state and the directors of equalization regarding the methods allowed for adjustments. Representative Cronin distributed a draft document that was prepared by the department addressing adjustments that may be made to ag land by local directors of equalization. He suggested creating a list of allowable adjustments and the documentation required so all local directors of equalization have the same information. All assessments need to be submitted to the department by January 1st with proper documentation for adjustments made by the directors of equalization.

The Task Force members expressed concerned about the 10% limitation for annual increases and decreases in assessments for cropland and noncropland. Many counties may never reach their full assessed value because the Olympic average for cropland provided by the model is currently increasing at a rate that is more than 10%.

During the second meeting on August 29, Matt Fonder, was introduced as the Director of Division of Property and Special Taxes. Ms. Colleen Skinner distributed a handout containing the new data and information of ag land assessments. The average change for the Olympic average for cropland was 17.5% with the highest change in Brule County of 28.88% and the lowest change in Lawrence County of 7.8%. The average Olympic change for noncropland was 1.87% with the highest change of 6.92% in Spink County and the lowest change of -5.15% in Bennett County.

The disparity amongst the counties for the cropland assessments without the 10% limitation was discussed. This disparity is due to the fact that counties were at the different levels of the market value when the productivity system was enacted. With cropland revenues increasing dramatically each year, some counties are falling further behind and it will take longer for those counties to catch up or they will face a significant increase at some future date. For the 2012 assessment year, only Lincoln County is not limited to the 10% limitation for increases to the cropland assessments. Currently, 46 counties are at full productivity level for noncropland for the 2011 to 2012 assessment. There are 14 counties that are limited to a 10% increase for noncropland production and there are six counties that are limited to a 10% decrease for noncropland production.

The Legislature wanted a revenue neutral assessment during the first year of implementation of the productivity system for agricultural land. From 2009 to 2010, the ag land values increased by 3.1%. The ag land values increased 7% from 2010 to 2011.

Dr. Burton Pflueger, Professor of Economics at South Dakota State University, said that the strength of commodity prices are driving the recent increase in assessment valuations more than yield data or planted acres. He stated that the counties with the ability to raise more corn and soybeans will show increases in assessed valuations more quickly than those counties with wheat and hay. He also noted that the changes in the relationship of gross revenues to production costs from year to year are not significant enough to warrant a change in the landlord share at this time.

Mr. Carter Anderson, National Agricultural Statistic Service, told the task force that the cash rent survey has changed to a probability based survey with a weighted average result. The change now requires at least 30 reports from each county. This new method of calculating data is used for both cropland and noncropland.

The task force members expressed concerns with the following issues:

- Actual use versus highest and best use;
- Easements;
- Cash rents;
- Disparity between cropland and noncropland assessments in relation to the full productivity value;
- The 10% limit on changes to the assessed value of cropland and noncropland; and
- Communication between the directors of equalization and the Department of Revenue.

During the third meeting on October 11, Andy Gerlach, Secretary of the Department of Revenue, informed the committee that Matt Fonder accepted a position with the Alaska Department of Revenue. Mr. Michael Houdyshell will be the new Director of Division of Property and Special Taxes.

Mr. David Wiest, Secretary for the Department of Revenue, reminded the committee of the circumstances prior to the implementation of the new productivity system and the process the state has went through to implement the system. The landlord share and capitalization rate used in the model were determined based on the desired end result at the time when the legislation was enacted. He noted that when the productivity system was implemented, each county across the state did not start at the same level of assessment. Therefore, there are a number of problems that remain from the old system and some counties are still behind in their assessment values and need to catch up. He discouraged the task force from making any significant changes to the system.

Fred Baatz summarized the ag land assessment practices in the surrounding states as follows:

- Minnesota – uses the market system and considers highest and best use of the property. Minnesota has a Green Acres provision that removes nonagricultural influences from the market system assessment;
- Nebraska – uses the market system. There are seven different classifications of ag land;
- Iowa – uses productivity model with a limitation of a 4% movement in assessed value year to year;
- North Dakota – uses productivity model as the base for assessments and uses a number of modifiers to adjust the production capability;
- Wyoming – uses productivity model as the base for assessments. The state has three classes of land; and
- Montana – uses productivity model as the base for assessments. The Montana Department of Revenue conducts on appraisal of all land every six years based on five use types.

Matt McCaulley, South Dakota Corn Growers Association, distributed a handout reviewing the history of events leading to the need of the state to switch from the market value system to the productivity system to value ag land. Speaking on behalf of South Dakota Wheat Growers, South Dakota Corn Growers, South Dakota Conservation Districts, South Dakota Stock Growers, Coops, Farmers Union, South Dakota Grassland Coalition, and South Dakota Cattleman's Association, Mr. McCaulley said that the agricultural valuation system is working and small changes should be made. He noted that the landlord share and input costs should be reviewed annually to determine if an adjustment would be appropriate. He listed four points on behalf of the ag groups:

1. Maintain opposition to use of cash rents to determine taxable value of land;
2. Opposed to the proposed change to actual use from the current system this legislative year;
3. Believe it is premature to extend the 2017 deadline, and prefer a discussion of solving the county specific issues; and
4. It is unacceptable that it will take a decade to update the soil survey maps.

Mr. McCaulley noted that Farmers Union and South Dakota Grassland Coalition asked not to be included in point 2, and South Dakota Cattleman's Association has members supporting both sides of point 2.

The task force reviewed two drafts that addressed the limitations concerning the amount of annual increase or decrease that could be made to the county's ag land assessment. The task force discussed the merits of both options and selected the one that provided change with the most certainty.

The task force also discussed legislation that would permit equalization of cropland and noncropland within a county. In some counties there is a significant disparity between cropland and noncropland as currently assessed value compared to its full productivity value. This proposed legislation was not adopted. The task force also discussed draft legislation that would revise the number of years that land has to be inundated by water before a request may be made to have the land specially assessed. This proposed legislation was not adopted.

Listing of Legislation Adopted

1. *An Act to revise the limitation on the increases and decreases that may be made to the total taxable value of cropland and noncropland.*

   The proposed legislation amends the ten percent limitation to a graduated system depending on the disparity of the full production value to the current taxable value.

Summary of Meeting Dates & Places and Listing of Task Force Members

The task force met on April 29, August 29, and October 11 in Pierre.

Task Force Members Were: Senator Larry Rhoden, Chair; Representative Justin Cronin, Vice Chair; Senators Jason Frerichs, Tom Hansen, Billie Sutton; Representatives H. Paul Dennert, James Schaefer, and Steve Street; and Public Members Mark Biedenfeld, Kirk Chaffee, Larry Gabriel, Dave Knudson, Ron Olinger, and Jim Peterson.

Staff members were: Fred Baatz, Principal Research Analyst; and Lisa Shafer, Legislative Secretary.

JOINT COMMITTEE ON APPROPRIATIONS

Study Assignment

A continuing review of the appropriations process.

Summary of Interim

<u>At its March 28, 2001 meeting, the JCA:</u>

- Issued 7 Letters of Intent as Follows:
    - **Department of Human Services, Department of Social Services, and Office of the Governor –** Expressing JCA support for the reform of the South Dakota Medicaid system to provide better and more appropriate care for the patients and residents of South Dakota. This Letter expressed JCA's understanding that this work will go forward under the umbrella of the Governor's Medicaid Long Term Solutions Work Group. Quarterly reports to the JCA were requested.
    - **Department of Human Services, Department of Social Services, and Unified Judicial System –** Directing the Departments to administer their FY12 appropriations and carryover funds from FY11 in conformity with the "FY12 Provider rate reduction proposal using one-time money" reflected in the General Bill as adopted by the JCA which ultimately became law. Quarterly reports from the departments were requested.
    - **Department of Tourism –** Provided direction for the distribution of funds for Tourism Challenge Grants, Office of the Arts, Archeological Research Grants, and the Cultural Heritage Center from one-third of the gross receipts tax on visitor related businesses. Such distributions should be pro-rata up to specified maximums. Any shortfall in funds available from the maximum amounts would also be shared pro-rata among the programs. Quarterly reports to JCA were requested.
- Received a LRC staff report on the Session Wrap-up, consisting of:
    - Summary of the FY12 Budget
    - FY11/12 Sources and Uses Scorecard
    - FY12 General Bill Summary

<u>At its June 23, 2011 meeting the JCA:</u>

- Heard reports on FY11 fiscal close and FY12 budget implementation from BFM and the Board of Regents.
- The Committee approved the proration of interest earnings as recommended by the Bureau of Finance and Management and received a report on various transfers of funds.
- Approved a Board of Regents transfer of FY12 funds as requested.
- Heard a status report on the Medicaid Long Term Solutions Work Group together with an enumeration and summary information regarding the other Governor's Task Forces working on various subjects.

- Heard LRC staff reports on the following subjects:
  - Year-to-date General Fund performance
  - Medicaid enrollees
  - Requests to BFM for Condition Statements
  - Refinements of the OneNote system for distributing information to appropriators
- Two additional Letters of Intent were issued as follows:
  - **Board of Regents – Performance Improvement Fund –** Provides JCA guidance regarding uses of the $1.5M in one-time funding to the Public Universities' Performance Improvement Fund for three specific purposes: Center for Statewide E-Learning, Research Infrastructure, and Student Success.
  - **Board of Regents – Monitor Contract and Grant Levels –** Requested biannual reports regarding the impacts of budget reductions on grants and contract awards from the federal government and private corporations.
- Because of financial constraints resulting from the economic crisis, the JCA decided to forego the East- and West-River Tours for this year. The tours are considered valuable to the work of the Committee and may resume next year if financial circumstances permit.
- The Committee concluded with a bus tour and briefing by the Mayors of Pierre and Ft. Pierre on the flood damage to both cities.

<u>At the October 14, 2011 meeting, the JCA:</u>

- Received information regarding several on-going matters:
  - Year-to-date general fund and trust fund performance
  - Current executive branch estimates of costs from the flood damage
  - Requesting condition statements on Other Funds from BFM
  - Coordination regarding the appropriations implications of the Governor's Red Tape Review initiative
  - Fall budget schedule
- Discussed FY12 Budget Implementation regarding:
  - School district survey regarding budget reductions (Senator Brown)
  - Department of Game, Fish & Parks with emphasis on flood damage
  - Department of Corrections
  - Department of Social Services
  - Office of School and Public Lands
  - Office of the Treasurer
- Heard reports regarding the following Governor's Task Forces:
  - Medicaid Long Term Solutions Work Group
  - Health Insurance Exchange
  - Infant Mortality
  - Higher Education

The JCA has scheduled a December 6, 2011 meeting for the following purposes:

- Initial reaction to Governor's budget
- Approval of JCA budget call to all state agencies
- Approval of JCA agency hearing schedule and other hearing procedures
- Directions to staff

Listing of Legislation Adopted

None

Listing of Committee Members

Senators Corey Brown, Lead Co-Chair; Jeffrey Haverly, Phyllis Heineman, Al Novstrup, Deb Peters, J.E. "Jim" Putnam, Bruce Rampelberg, Billie Sutton, and Larry Tidemann, Lead Co-Vice Chair; and Representatives Dean Wink, Lead Co-Chair, Jim Bolin, Lance Carson, Co-Vice Chair, H. Paul Dennert, Dan Dryden, Kent Juhnke, Fred Romkema, Jim White, and Susan Wismer.

LRC Fiscal Staff

Fred Schoenfeld, Chief of Fiscal Analysis and Budget, Sue Cichos, Principal Fiscal Analyst; Annie Mehlhaff, Principal Fiscal Analyst, Terry Miller, Senior Fiscal Analyst, and Aaron Olson, Senior Fiscal Analyst.

CODE COMMISSION (SOUTH DAKOTA)

Study Assignment

The Code Commission supervises the publication of the South Dakota Codified Laws, corrects errors to the code, assists the code counsel, makes recommendations to the Legislature, and contracts for replacement volumes.

Summary of Interim

Replacement Volumes – The Code Commission met on June 23, 2011, to conduct routine business regarding the ongoing update of the Code. In that regard, the Commission authorized the reprinting of *Volumes 19 and 20* of the Code. Due to the number of pages in each volume, their respective pocketpart page count and the anticipated increase in each pocketpart, volumes 19 and 20 will be recompiled into volumes 19, 19A, and 20.

Publishing Contract – The Code Commission extended the contract with Thomson West for publication of the South Dakota Codified Laws (Code) for another year. The term of the contract extension begins on July 1, 2011, and continues until June 30, 2012, unless terminated earlier.

New Members – The Code Commission has three new members. Senator Joni Cutler replaced Senator Nancy Turbak-Berry and Representative Brian Gosch replaced Representative Tom Deadrick. The State Bar appointed former legislator Margaret Gillespie to replace Lee McCahren.

Listing of Legislation Adopted

Annual codification of the previous year's legislation.

An Act to codify legislation enacted in 2011.

Summary of Meeting Dates and Places

The Code Commission met two times. They met on February 15, 2011, at the State Capitol in Pierre and the second one was held in conjunction with the State Bar Association on June 23, 2011, in Sioux Falls.

Listing of Committee Members

Code Commission members are Michael DeMersseman (Chair), Senator Joni Cutler (Vice-Chair), Representative Brian Gosch, Tom Lee, and Margaret Gillespie.

Listing of Staff Members

Staff members were Doug Decker, Code Counsel, and Kris Schneider, Senior Legislative Secretary.

DEPARTMENT OF HUMAN SERVICES AGENCY REVIEW COMMITTEE

Study Assignment

The Department of Human Services Agency Review Committee was an agency review or a "sunset" committee that was conducted during the 2011 legislative interim. Each year since 2003, pursuant to SDCL Chapter 1-26E, the Executive Board of the Legislative Research Council selects one or more state agencies for review in a schedule that allows every state agency to be reviewed at least once every ten years.

Summary of Interim

The committee's first meeting consisted primarily of the opening presentation from the Department of Human Services. Secretary Laurie Gill reviewed the department's mission which is to promote the highest level of independence for all individuals, regardless of disability or disorder. The review included the department's current structure following the recent executive reorganization and its history. She was followed by other members of the department's management team including Mr. John Hanson, Director of the Office of Budget and Finance; Mr. Dan Lusk, Director of the Division of Developmental Disabilities; Dr. Ted Williams, Director of the South Dakota Developmental Center in Redfield; Mr. Grady Kickul, Director of the Division of Rehabilitation Services; and Ms. Gaye Mattke, Director of Services to the Blind and Visually Impaired. Mr. Hanson provided a ten-year overview of the department's budget and staffing. The remaining presenters highlighted the work being done in their respective divisions, their budgets, staffing levels, the people they serve, and the services they are able to provide to people with disabilities with the help of their partners in private agencies throughout the state.

Prior to the first meeting, the committee chair had asked members of the committee to visit a community support provider in their local areas. Following the opening presentation, several members of the committee shared their experiences and what they had learned from those providers.

The second meeting was a two-day meeting. Committee members gathered in Redfield on the first day for a tour of the South Dakota Developmental Center. They were able to see a sampling of where residents live, work, and attend school. They also heard from some residents who spoke of the jobs they performed at the center and who provided a tour of their living quarters. Following the tour, the committee took public testimony on the center. Those providing testimony were Duane Sanger, the mayor of Redfield, and Randy Joyce, the superintendent of the Redfield School District. Both spoke highly of the center and of the collaborative efforts they have undertaken with the center.

Committee members gathered in Pierre on the second day. They began by hearing from four different agencies that provide services to individuals with disabilities. Those appearing before the committee included representatives from South Dakota Achieve, Black Hills Workshop, Independent Living Choices, and Children's Care Hospital and School. They spoke of the individuals they serve, the services and equipment they provide, their funding, and their relationship with the Department of Human Services.

Following those presentations, the committee heard public testimony relative to the department. All those testifying spoke favorably of the work of the department. Several members of the Board of Vocational Rehabilitation testified in support of the Division of Rehabilitation Services. Most of them had received assistance from the division and made note of how much the assistance had benefitted them. Others highlighted the essential services provided by the Services for the Blind and Visually Impaired. Several of the individuals testifying noted the importance of the collaboration that takes place among all the agencies providing services to individuals with disabilities in this state, and said they hoped it could be enhanced in years to come. After the public testimony was complete, Secretary Gill provided the committee with answers to questions that had arisen at the last meeting, and the committee began to review possible recommendations for the department.

At the third and final meeting, committee members reviewed and unanimously approved the proposed committee legislation that updates and makes some style and form revisions to certain sections of law pertaining to the Department of Human Services. They recommended it as a committee bill that will be introduced at the next legislative session.

Secretary Gill noted her recommendations and intended outcomes for the Department of Human Services under her leadership. They include a strategic planning process that she and her management team will undertake beginning in November with the help of consultant, an examination of the processes within the department to look for any ways they could be more efficient and accurate, and a plan to expand the capacity of the staff of the Developmental Center to make them an increased resource and support for the entire delivery system of services to people with disabilities. Secretary Gill stated her willingness to keep the committee members and all legislators informed on the department's progress in these areas.

The committee also approved the following recommendation:

> The Department of Human Services Agency Review Committee recommends that the Executive Board of the Legislative Research Council appoint a working group composed of no more than fifteen members, including up to four legislators, and employees of pertinent state government agencies and community support providers to achieve the following:
>
> - Reassess the mission and programmatic offerings at the SD Developmental Center;
> - Assess the potential for realignment of programs at the Developmental Center in conjunction with the programs being offered in communities;
> - Assess and recommend the potential integration of other human service-related programs being offered by the state that would align with potential offerings at the Developmental Center; and
> - Develop a time frame and long-range plan for cost-effective implementation of consumer-based services.
>
> The working group shall report its findings and recommendations to the 2014 Legislature.

In closing, the committee recognized that the Department of Human Services should not be sunsetted. They thanked the department staff for their assistance and cooperation in the agency review and urged them to follow up with the Legislature on the recommendations discussed.

Listing of Legislation Adopted

- An Act to repeal and to make style and form revisions to certain provisions related to the Department of Human Services.

This Act revises some awkward language in the chapter establishing the Department of Human Services. It also repeals certain sections of the chapter that pertain to a prior reorganization of the department and are outdated.

Summary of Meeting Date and Places and Listing of Committee Members

The Department of Human Services Agency Review Committee met in Pierre on August 31st, September 30th, and October 24th. The committee met in Redfield on September 29th.
Committee members were: Senator Jean Hunhoff, Chair; Representative Jacqueline Sly, Vice Chair; Senators Jim Bradford, Phyllis Heineman, and Elizabeth Kraus; Representatives Peggy Gibson, Jenna Haggar, Larry Lucas, Melissa Magstadt, Tad Perry, and Jim White.
Staff members were Clare Charlson, Senior Research Analyst; Sue Cichos, Principal Fiscal Analyst; Amanda Reiss, Legislative Attorney; and Kris Schneider, Senior Legislative Secretary.

RULES REVIEW COMMITTEE

Study Assignment

A review of proposed state agency rules.

Summary of Interim

At the end of the 2011 interim, the Rules Review Committee will have had held eight meetings and will have reviewed approximately 80 sets of rules. The committee has two additional meetings scheduled for later this year. One meeting is scheduled for November 15th and another tentatively set for December 20th.

The committee reviewed the rules from 27 of the executive branch agencies, licensing boards, and regulatory commissions. Mostly, the rules updated the routine operations of state government; however two new programs were implemented. The Board of Pharmacy adopted the Prescription Drug Monitoring Program and the Department of Labor and Regulation established the administrative oversight for appraisal management companies.

One rule proposal from the Department of Education regarding teacher evaluation standards was sent back to an earlier step in the rules process. The Rules Review Committee needed more information from the agency before the Committee would approve the rule. At the September meeting the Department of Education supplied the needed background information and the rule was approved.

Listing of Legislation Adopted

No legislation is proposed as of the date of this report.

Listing of Committee Members

Members of the committee included Senator Jean Hunhoff (Chair), Representative Shawn R. Tornow (Vice Chair); Senators Angie Buhl and Mike Vehle; and Representatives Peggy Gibson and Roger Hunt.

Listing of Staff Members

Staff members were Doug Decker, Code Counsel, and Kris Schneider, Senior Legislative Secretary.

SALES TAX REVIEW COMMITTEE

Study Assignment

The committee was established to review the sales and use tax exemptions.

Summary of Interim

During the first meeting on July 12, Andy Gerlach, Secretary of the Department of Revenue; David Wiest, Deputy Secretary; Jan Tally, Director of the Business Tax Division; and Jane Page, Assistant Director of the Business Tax Division made presentations. In the 2011 fiscal year, the sales and use tax generated over $700 million in revenue for the state or about 18% of the total state budget. The sales tax was implemented in 1935 at a 2% rate. The use tax was passed in 1939 at 2%. The sales tax increased to 3% in 1965 and to 4% in 1969. Since the sales tax was introduced, it has varied from 2% to 5%, including a couple temporary increases. One temporary increase in 1980 funded the state purchase of railroad property. Another temporary increase in 1987 established the REDI fund.

Jan Talley explained how the state sales and use taxes are applied. She said that the sales and use taxes are applied to the retailer gross receipts from all sales of tangible personal property, services, and products transferred electronically. The point of taxation is where the receipt of purchase occurs or where the service is received or where first use of the service applies.

Jane Page explained the Streamlined Sales Tax Project and the history behind its development. For decades, states have sought to require out-of-state retailers to collect the tax. However, it has been interpreted by the courts that the business must have nexus with the state. In 1967, the U.S. Supreme Court ruled in National Bellas Hess v. Illinois that the limited amount of contact was not enough to create nexus under either the U.S. Constitution's due process or the commerce clause. In 1992, the court decision in Quill Corp v. North Dakota held requiring collection of tax by out-of-state retailers with no physical presence in a state would be a burden on interstate commerce and would therefore violate the Commerce Clause of the U.S. Constitution.

Significant losses of revenue are expected due to growth in electronic commerce and inability of states to administer the use tax with consumers. It is projected that nationwide, state and local governments will lose and estimated $14.8 billion in FY2012. South Dakota is projected to lose $38.8 million in FY2012. The Streamlined Sales and Use Tax Agreement (SSUTA) was approved in November 2002. The provisions are based on simplifying the administration of state sales tax, simplifying rates, creating uniform definitions, and leveraging the use of technology. As of June 2011, there are 21 full member states and three associate member states in the SSUTA.

The department outlined each sales and use tax exemption found in chapters 10-45 and 10-46 for the committee. After each exemption was presented by the Department, the committee determined whether to further review the sales and use tax exemption at the next meeting. The following exemptions were selected by the committee for further review and public testimony at the next committee meeting:

- Repair parts or maintenance on agricultural machinery or equipment
- Commercial fertilizer

- Advertisings services
- Displays or signage
- Attorney/Accountant reimbursable expenses
- Funeral services reimbursable expenses
- Lodging membership fees
- Lodging and parking sites
- Lawn care chemicals
- Radio and television broadcasting
- Coins and bullion
- Sales of tickets or admissions to the grounds and grandstand attractions at public fairs
- Large boats
- Leased motor vehicles
- Mini-storage units

The primary focus of the second meeting held in Pierre on August 23 and 24 was to review the sales and use tax exemptions selected by the committee during the first meeting in more detail and to take public testimony on proposed repeal of the exemptions.

During the discussion of the exemption concerning agricultural repair parts and maintenance items, the committee reviewed a table on how the surrounding states apply or exempt taxes on agricultural equipment, service, parts, and repairs. A number of implement dealers testified that they will lose revenue to out-of-state dealers if the services and repairs made by their dealership are subject to tax. It was noted that the surrounding states that do not generally tax farm equipment or agricultural parts and repairs.

The exemption for advertising services concerns the placement of an ad in the media. Currently, Hawaii and New Mexico are the only states that tax this form of advertisement services. Testimony was given that a tax on advertising will increase the cost of advertising and companies will pass this expense to their customers or it may result in fewer advertising sales and less sales tax revenue. There was discussion about the possibility of taxing political advertisements. David Bordewyk referred to a US Supreme Court case that created a four point test to tax advertising, whether it targeted small groups or content based.

The exemption that applies to lodging for more than 28 consecutive days, campground stays for more than 28 consecutive days, and for casual or occasional rentals for less than ten days per year was discussed. It was noted that an additional $48 million could be collected; however, a significant portion of the estimated revenue would be from apartment and home lease and rentals.

The exemption for coins, currency, and bullion was discussed. The exemption was enacted recently to encourage out-of-state venders to participate in coin shows and to permit the investment in bullion without certain tax consequences.

The current three percent tax on boats over twelve feet in length or a motorboat was explained to the committee. The additional revenue generated by increasing the tax from three to four percent would be deposited in the general fund and not the Highway Fund. The committee was reminded that this is not a removal of an exemption, but an increase of the boat excise tax. It is estimated the state would generate an additional $300,000 in revenue for the general fund.

The department explained how the taxes are currently applied to the rental and leases of motor vehicles. It was stated that the exemption is for vehicles that are leased for more than 28 days. Currently, vehicles leased for more than 28 days are subject to a three percent motor vehicle excise tax on lease payments and a three percent motor vehicle tax on the residual value if the customer buys out at the end of the lease. If the committee taxed long-term rentals/leases, revenue would be removed from the Highway Fund and redirected to the general fund.

The committee also discussed and heard testimony on the other selected sales and use tax exemptions. A draft that provided cleanup of the sales and use tax chapters was also presented to the committee.

Public Testimony

The meetings were generally well attended by many interested parties representing the agricultural and businesses associations, and other interested taxpayers. The testimony provided by the public generally related to organizations and individuals who were not in support of the repeal of certain sales and uses tax exemptions. Testimony usually centered on the burden to administer the tax and the potential of lost business revenue or increased cost of the purchases.

Listing of Legislation Adopted

2. *An Act to repeal the sales and use tax on coins, currency, and bullion.*

   The proposed legislation repeals the exemption on coins, currency, and bullion.

3. *An Act to increase the excise tax on boats.*

   The draft legislation increases the excise tax on boats from three percent to four percent. The revenue from this excise tax is deposited in the general fund.

4. *An Act to revise certain provisions regarding the sales and use tax.*

   The draft legislation removes some outdated language and references to an excise tax.

Summary of Meeting Dates & Places and Listing of Task Force Members

The task force met on July 12 and August 23 and 24 in Pierre.

Task Force Members Were: Representative Charles Turbiville, Chair; Senator Larry Tidemann, Vice Chair; Senators Tom Hansen, Jim Hundstad, Tom Nelson, Al Novstrup, J.E. “Jim” Putnam, and Bruce Rampelberg; and Representatives Kristin Conzet, Bernie Hunhoff, Tom Jones, Kim Vanneman, Mike Verchio, Mark Willadsen, and Dean Wink.
Staff members were: Fred Baatz, Principal Research Analyst; and Lisa Shafer, Legislative Secretary.

STATE-TRIBAL RELATIONS STUDY COMMITTEE

Study Assignment

The State-Tribal Relations Study Committee is an ongoing interim committee that was created in statute (SDCL 2-6-20 through 2-6-23) in 1993 as a part of the state's reconciliation efforts. The statute directs the committee to make a continuing study of the relations between the state and its political subdivisions and the tribes and their tribal governments. The committee provides a forum within state government for discussion by of issues affecting the Native American community and issues involving Tribal governments and State government. The committee also serves as a way of familiarizing legislators with such issues.

Summary of Interim

The State-Tribal Relations Study Committee held three meetings during the 2011 Interim: a meeting at the Capitol in Pierre on March 11, a meeting in Pierre on May 26, and a meeting in Eagle Butte with the Cheyenne River Sioux Tribe on October 13.

The committee held an informational and organizational meeting in the Capitol in Pierre on March 11, 2011, during the legislative session. At the March 11 meeting, the committee selected Representative Tom Brunner as Chair and Senator Ryan Maher as Vice Chair for the 2011-2012 interims and discussed possible study topics and plans for the 2011 interim. The committee also heard a brief statement by Mr. J.R. LaPlante, the newly appointed secretary of the Department of Tribal Relations, which was established by Governor Daugaard as a cabinet-level department.

At the May 26 meeting in Pierre, the committee heard several presentations by state agencies on subjects affecting Native Americans. Secretary J.R. LaPlante of the Department of Tribal Relations briefed the committee on his goals and activities for the new department and provided basic legal background that governs relations between the state and the tribes. He discussed the department's core values, which stress the fact that each tribe is separate and unique with its own historical and cultural background, that each tribe makes important contributions to the state of South Dakota, and that it is important for state government to deal with the tribes on an individual basis. Secretary LaPlante expressed interest in conducting a new state-tribal relationship study, since the last major study of this type was done in 1974-75. He also discussed ongoing issues such as land into trust, Bear Butte, tax collection agreements, and education. Mr. Charles McGuigan of the Office of the Attorney General discussed land and jurisdiction issues on reservations and other areas fitting the legal definition of "Indian Country". He also discussed treaties and Congressional actions that led to the current system of reservations and trust land, as well as a discussion of criminal and civil jurisdiction on reservation areas. Mr. Roger Campbell, Director of the Office of Indian Education, Department of Education, and former director of the Office of Tribal Government Relations, discussed education issues affecting Native American youth and the activities of the department and the Office of Indian Education, including several programs designed to improve educational opportunity for Native American students and to make the transition to postsecondary education more successful. Mr. David Wiest, Deputy Secretary of the Department of Revenue, discussed tax collection agreements between the state and the tribes in South Dakota. Tax collection agreements were first authorized in 1974, and most tribes now have tax collection agreements in place. Secretary Kim Malsam-Rysdon of the Department of Social Services discussed programs and activities of the Department of Social

Services that affect South Dakota's Native American population and the tribes. The committee also heard public testimony.

The committee's third meeting was held on October 13, 2011 at Eagle Butte with the Cheyenne River Sioux Tribe. The meeting began with an update by Secretary J.R. LaPlante of the Department of Tribal Relations on his department's activities and initiatives, including meetings with Governor Daugaard at all of South Dakota's reservations. He reiterated his interest in conducting a new comprehensive state-tribal relationship study and discussed other issues facing the state and the tribes. Cheyenne River Sioux Tribal Chairman Kevin Keckler welcomed the committee and discussed several issues facing the Cheyenne River Sioux Tribe, including land into trust and the tax collection agreement. He noted that Cheyenne River does not operate a casino. The committee also heard several presentations by tribal council members and other officials, particularly in the field of health care. The committee also heard public testimony at this meeting. The committee then toured several tribal facilities in Eagle Butte. These included the new Indian Health Service hospital, which will begin operation in November 2011, new housing units that have been constructed for hospital personnel, and the tribe's nursing home facility.

Listing of Legislation Adopted

None

Summary of Meeting Dates and Places and Listing of Committee Members

The committee met in the State Capitol in Pierre on March 11 and May 26, 2011 and at Eagle Butte with the Cheyenne River Sioux Tribe on October 13, 2011.

Members of the committee included Rep. Tom Brunner (Chair), Sen. Ryan Maher (Vice Chair); Senators Jim Bradford, Russell Olson, Billie Sutton, and Craig Tieszen; and Representatives Ed Iron Cloud III, Kevin Killer, Patricia Stricherz, and Mike Verchio.

Committee staff members were Tom Magedanz, Principal Research Analyst; and Lisa Shafer, Legislative Secretary.

WIND ENERGY COMPETITIVE ADVISORY TASK FORCE

Study Assignment

The South Dakota Wind Energy Competitive Advisory Task Force was created by the 2011 Legislature in Senate Bill 194 as an interim study committee. The task force was directed in SB 194 to "… review South Dakota wind energy taxation and incentives and … advise the Governor and Legislature regarding the competitive atmosphere of wind energy incentives and taxation among the several states…. "The task force was also directed to "…make recommendations as to the proper mechanisms to tax wind energy and compete with surrounding states for the construction and maintenance of wind energy installations."

Summary of Interim

The South Dakota Wind Energy Competitive Advisory Task Force under SB 194 was to consist of two members of the South Dakota House of Representatives, two members of the South Dakota Senate, and seven members of the general public appointed by the Governor and by legislative leadership.

The committee held three meetings in the State Capitol in Pierre: July 27, September 7, and October 5, 2011. At the July 27, 2011 meeting, the task force heard presentations on the history and status of wind energy in South Dakota by the Public Utilities Commission, as well as public testimony from a variety of interested parties.

At the September 7 meeting, the task force heard presentations by the Department of Revenue and the Legislative Research Council on state taxes and incentives related to the development of wind energy in South Dakota and other states in the region. The task force also heard reports on the activities and status of the South Dakota Energy Infrastructure Authority and wind energy development on tribal lands. Representatives of four wind energy developers and cooperatives also made presentations detailing their operations and their needs and priorities in the development of wind energy. These included Iberdrola Renewables, NextEra Energy Resources, Basin Electric Power Cooperative, and Acciona Energy.

The October 5 meeting consisted of additional public testimony, task force discussion of issues, and a determination of task force findings and recommendations to be included in the task force's final report.

<u>Wind Energy Task Force Findings</u>. Task force members voted at the October 5, 2011 meeting to include the following findings in the task force's final report:

"The purpose of the Wind Energy Competitive Task Force is to address state taxes on wind and South Dakota's competitive stance relative to neighboring states.

"The critical aspects to wind energy development include a robust wind resource, investment capital, buyer for electricity output, economically feasible transmission capacity, and regional demand for power. Transmission, energy markets, and federal tax incentives are viewed as more critical drivers of wind energy development than state tax policy.

“Wind energy is nondispatchable. Its primary value is based on fuel displacement.

“South Dakota does not have the population density to absorb any significant amount of in-state wind generated electricity. Customers in the state are currently served by other economically produced electricity technologies, including gas-fired thermal facilities. Any major development of wind energy must seek markets outside the state.

- At the 2000 year end, South Dakota had 0 MW of wind energy installed.
- At the 2003 year end, South Dakota had 44 MW of wind energy installed.
- At the 2006 year end, South Dakota had 44 MW of wind energy installed.
- At the 2008 year end, South Dakota had 187 MW of wind energy installed.
- At the 2010 year end, South Dakota had 709 MW of wind energy installed.

“South Dakota’s total tax burden is materially higher than its neighbors under the current system and even higher after the rebates expire for sales/use and contractors excise tax. This has an adverse impact on decisions to site wind energy projects within the state.

“A wind sales/use/contractor’s excise tax comparison between the states of South Dakota, North Dakota, Minnesota, and Iowa shows that South Dakota relies much more heavily on up-front taxes than surrounding states.

“South Dakota’s state sales/use tax rate is 4% (SDCL 10-45, 10-46). The use tax is paid by the purchaser or user if sales tax was not charged by the retailer or service provider. The contractors excise tax is a 2% tax on a contractor’s gross receipts (SDCL 10-46A, 10-46B, 10-46C).

“Wind farms generating 5 MW or greater are subject to property tax under SDCL 10-35.

“The alternative tax has two parts: 1) a nameplate capacity tax (SDCL 10-35-18); and 2) a gross receipts tax (SDCL 10-35-19), both of which are in lieu of property tax. The nameplate capacity tax is $3 multiplied by the total nameplate capacity as measured in kilowatts; one hundred percent of that goes to local governments.

“Sales, use, and contractors excise taxes on the same 200 MW project in South Dakota, South Dakota in 2013, North Dakota, Minnesota, and Iowa, respectively, would be:

- $12.9 million (South Dakota through 2012)
- $22.0 million (South Dakota post-2012)
- $2.0 million (North Dakota)
- $2.8 million (Minnesota)
- $3.4 million (Iowa)

“Property taxes on the same project in South Dakota, North Dakota, Minnesota, and Iowa, respectively, would be:

- $25 million (South Dakota)
- $15 million (North Dakota)
- $16.8 million (Minnesota)
- $25 million (Iowa)

“Income taxes on the same project in South Dakota, North Dakota, Minnesota, and Iowa, respectively, would be:

- $0 (South Dakota)
- $2.2 million (North Dakota)
- $3.4 million (Minnesota)
- $4.2 million (Iowa)

“A total wind taxes comparison between the States of South Dakota, North Dakota, Minnesota, and Iowa are as follows:

- South Dakota’s current total wind taxes would be $37.9 million.
- South Dakota’s estimated total wind taxes for a project in the year 2013 would be $47 million. (ND-$19.2 million. MN-$23.0 million. IA-$32.6 million.)

“If a new wind facility were exempt from sales/use and contractors’ excise tax during construction; South Dakota would still receive substantial tax revenue over 20 years, estimated at more than $32.5 million. Tax benefits would be as follows:

- Property tax - $25.0 million
- Sales/use and contractors’ excise tax from operations and maintenance - $7.5 million
- Additional Tax benefits from construction and operations

“Without state tax changes, a 200 MW project will pay roughly $25 million more in state taxes than in neighboring states making South Dakota projects much less competitive.

(Note: The data and information presented in these findings are derived from presentations and testimony provided during earlier meetings of the task force by stakeholders in the wind energy industry and related state agencies.)”

<u>Task Force Recommendations.</u> Task force members voted at the October 5, 2011 meeting to include the following recommendations to the Governor and the Legislature in accordance with SB 194(2011):

-The Wind Energy Competitive Advisory Task Force recommends that the State of South Dakota:

1) Reduce the current level of upfront taxation, including contractors excise tax and sales and use taxes, on the construction costs of wind energy facilities, wind energy transmission and distribution facilities, and wind energy input and supply chain manufacturing facilities;

2) Maintain the current system of property taxes as they apply to wind energy facilities, including the alternative tax that was enacted in 2008, the nameplate capacity tax, and the gross receipts tax;

3) Continue the current state policy of levying no income taxes on wind energy facilities and related activities as specified in subdivision (1).

-In order to facilitate infrastructure resources necessary to further wind energy development in South Dakota, the Wind Energy Competitive Advisory Task Force encourages the Governor and the Legislature to review the scope, powers, funding, direction, and applicable statutes pertaining to the South Dakota Energy Infrastructure Authority established in SDCL Chapter 1-16I.

Listing of Legislation Adopted

None

Summary of Meeting Dates and Places and Listing of Committee Members

The committee held three meetings in the State Capitol in Pierre: July 27, September 7, and October 5, 2011.

Members of the task force included Representative Roger Solum (Chair), Senator Corey Brown (Vice Chair), Senator Jason Frerichs, Representative Steve Street, Mr. Paul Bachman, Mr. John DiDonato, Ms. Tracey Fischer, Mr. Brett Koenecke, Mr. Jeff Peters, Mr. Todd Wahlund, and Mr. David Wiest.

Committee staff members were Reuben Bezpaletz, Chief Analyst for Research and Legal Services; Tom Magedanz, Principal Research Analyst; Aaron Olson, Senior Fiscal Analyst; and Kris Schneider, Senior Legislative Secretary.